

1 IN THE CIRCUIT COURT FOR  
2 BARBOUR COUNTY, ALABAMA  
3

4 CASE NUMBER: CV-96-215  
5

6 RICHARD L. SEABORN,  
7

8 Plaintiff,  
9

10 vs.  
11

12 R.J. REYNOLDS TOBACCO COMPANY, et al.,  
13

14 Defendants.  
15

16 DEPOSITION TESTIMONY OF:  
17

18 DENNIS HIGHTOWER  
19

20 JUNE 8, 1999  
21

22 BEFORE:  
23

TERRY E. CRUTCHFIELD, COMMISSIONER, RPR

COPY

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STIPULATIONS

IT IS STIPULATED AND AGREED, by  
and between the parties through their  
respective counsel, that the deposition  
of:

DENNIS HIGHTOWER,

may be taken before Terry E. Crutchfield,  
R.P.R., Commissioner and Notary Public, at  
the law offices of Lightfoot, Franklin &  
White, L.L.C., The Clark Building, 400  
20th Street North, Birmingham, Alabama, on  
the 8th day of June, 1999, commencing at  
or about 12:00 p.m.

IT IS FURTHER STIPULATED AND  
AGREED that it shall not be necessary for  
any objections to be made by counsel as to  
any question, and that counsel for the  
parties may make objections and assign  
grounds at the time of the trial, or at  
the time said deposition is offered in  
evidence, or prior thereto.

IT IS FURTHER STIPULATED AND  
AGREED that notice of the filing of the

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1 deposition by the Commissioner is waived.

2 In accordance with Rule 5(d) of  
3 the Alabama Rules of Civil Procedure, as  
4 amended, effective May 15, 1988, I, TERRY  
5 E. CRUTCHFIELD, am hereby delivering to  
6 MR. R. GRAHAM ESDALE, the original  
7 transcript of the oral testimony taken on  
8 the 8th day of June, 1999.

9 Please be advised that this is  
10 the same and not retained by the Court  
11 Reporter, nor filed with the Court.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
in

HUMPHREY

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I N D E X

EXAMINATION BY:

PAGE

MR. ESDALE

7

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A P P E A R A N C E S

APPEARING ON BEHALF OF THE PLAINTIFF:

BEASLEY, ALLEN, CROW, METHVIN, PORTIS &  
MILES, P.C.

MR. R. GRAHAM ESDALE  
218 Commerce Street  
Montgomery, Alabama 36103

APPEARING ON BEHALF OF THE DEFENDANTS:

LIGHTFOOT, FRANKLIN & WHITE, L.L.C.

MR. LEE M. HOLLIS

MR. WILLIAM H. BROOKS

The Clark Building  
400 20th Street North  
Birmingham, Alabama 35203

JONES, DAY, REAVIS & POGUE

MR. RICHARD G. STUHAN

North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114

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A P P E A R A N C E S

(Continued)

APPEARING ON BEHALF OF THE DEFENDANTS:

WILLIAMS, POTTHOFF &amp; WILLIAMS

MR. HORACE G. WILLIAMS, III

125 South Orange Avenue

Eufaula, Alabama 36027

BEFORE:

Terry E. Crutchfield, Commissioner, RPR

in

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1 I, Terry E. Crutchfield, Court  
2 Reporter, acting as Commissioner, certify  
3 that on this date as provided by Rule 30  
4 of the Alabama Rules of Civil Procedure,  
5 and the foregoing stipulations of counsel,  
6 there came before me at the law offices of  
7 Lightfoot, Franklin & White, L.L.C., The  
8 Clark Building, 400 20th Street North,  
9 Birmingham, Alabama, on the 8th day of  
10 June, 1999, commencing at or about 12:00  
11 p.m., DENNIS HIGHTOWER, witness in the  
12 above cause, for oral examination,  
13 whereupon, the following proceedings were  
14 had.

15  
16 DENNIS HIGHTOWER,  
17 having been first duly sworn, was examined  
18 and testified as follows:

19  
20 EXAMINATION BY MR. ESDALE:

21 Q. State your name, please, sir:

22 A. Dennis Hightower.

23 Q. And how are you employed?

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1 A. I'm employed by R.J. Reynolds  
2 Tobacco Company.

3 Q. In what capacity?

4 A. I am currently the division  
5 manager.

6 Q. What division?

7 A. Birmingham.

8 Q. How long have you held that  
9 position?

10 A. Since 1992.

11 Q. Do you have any sales employees  
12 that work underneath you?

13 A. Yes, I do.

14 Q. How many?

15 A. Currently I have ten sales --  
16 ten sales reps, eight retail reps, one  
17 retail manager, and also I have some what  
18 we call general sales workers.

19 Q. You say general sales workers?

20 A. Yes, that's correct.

21 Q. Who is your retail manager?

22 A. John Borjeson.

23 Q. Can you spell that, please?

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1 A. Sure. Let me get the correct  
2 spelling in here. It's spelled  
3 B-o-r-j-e-s-o-n.

4 Q. What geographic division does  
5 the Birmingham division incorporate now?

6 A. We go from Jemison, Alabama  
7 north to the Alabama line, Alabama,  
8 Tennessee line, east and west to the  
9 Georgia line and to, of course,  
10 Mississippi.

11 Q. What -- is there a division  
12 below Jemison, I assume?

13 A. You're correct.

14 Q. And what is that called?

15 A. Macon.

16 Q. Out of Georgia?

17 A. That's correct.

18 Q. Who is the division manager for  
19 the Macon division?

20 A. Ray Hilliard.

21 Q. You say Hilliard?

22 A. That's correct.

23 Q. Like our senator?

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1 A. That's correct.

2 Q. What did you do before becoming  
3 a division manager in 1992?

4 A. I was a training and development  
5 manager.

6 Q. And where did you do that?

7 A. Macon.

8 Q. What were your job duties and  
9 responsibilities as a training and  
10 development manager?

11 A. It was to develop, train the  
12 sales reps at becoming better sales  
13 people.

14 Q. Would you get the new hires, or  
15 did it vary?

16 A. It varied.

17 Q. Were new hires part of what you  
18 did, or did it just depend on who could  
19 send who when?

20 A. Are you asking me --

21 Q. Yeah. In other words, did you  
22 have a course that was just for new hires,  
23 or did you -- were they mixed in just on

1 their availability to come to the  
2 training, or did you travel around?

3 A. No. We have a format for all  
4 new employees, new sales reps.

5 Q. Were you involved in their  
6 training and development, also, the new  
7 employees?

8 A. We didn't have any new ones in  
9 Macon. We were fortunate. We had one at  
10 one time, and he did not stay very long.

11 Q. Did this training and  
12 development manager position, was that  
13 only in the Macon division then?

14 A. No.

15 Q. Were there other training and  
16 development managers in other divisions?

17 A. At that particular time, yes.

18 Q. What time period are we speaking  
19 of?

20 A. '88 to, I guess, '92 -- well --  
21 yeah, '92.

22 Q. Was there a training and  
23 development manager in Birmingham, if you

1 know?

2 A. I wouldn't know. I mean, I  
3 wasn't in Birmingham. I was in Macon. I  
4 would say yes, there was one, because that  
5 was the structure for the company at that  
6 particular time.

7 Q. Did all divisions, to your  
8 understanding, have a training and  
9 development manager?

10 A. At that particular time, yes.

11 Q. As we sit here today, what are  
12 your -- what customers do you have primary  
13 responsibility for? It might be every  
14 one I don't know. I'm not familiar with  
15 how this works, so --

16 A. I am responsible for calling on  
17 independent retailers. I'm also  
18 responsible for calling on chains. I'm  
19 also responsible for calling on some  
20 wholesalers. And I'm also responsible for  
21 calling on some major chain stores, such  
22 as Bruno's and Wal-Marts. And when I say  
23 I, my people are responsible, but

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1 ultimately I am responsible.

2 Q. Okay. Can you give me some  
3 examples of independent retailers?

4 A. Are you asking for the names?

5 Q. Sure.

6 A. Okay. Tom & Jerry's.

7 Q. Shop-A-Snak?

8 A. No. Shop-A-Snak is a chain.

9 Q. Okay.

10 A. You've got Happy Raceway. You  
11 have Jemison Chevron. I mean, you have  
12 Skinner's.

13 Q. Okay.

14 A. One Stop. You have -- I mean, I  
15 can go on and on.

16 Q. No. That's fine. I'm just  
17 trying to get an example. And the chains  
18 would be -- you said Shop-A-Snak?

19 A. Shop-A-Snak, Bruno's, Wal-Mart.

20 Q. Well, you also said major  
21 chains, so I'm --

22 A. Major chains are Bruno's,  
23 Wal-Mart. Those are major chains.

1 Q. Right. And then --

2 A. Local chains are Shop-A-Snak.

3 Q. Okay. Any other examples other  
4 than Shop-A-Snak?

5 A. You have Sunny Food. You have  
6 Western Supermarket.

7 Q. Piggly Wiggly?

8 A. There's no Piggly Wiggly chain  
9 that I know of in Birmingham. There's a  
10 Piggly Wiggly chain in Georgia that we  
11 picked up.

12 Q. Would the Piggly Wigglys in  
13 Birmingham be considered independent  
14 retailers or wholesalers?

15 A. Independent retailers.

16 Q. And you said some wholesalers?

17 A. Yes.

18 Q. Can you give me some examples of  
19 those?

20 A. Skinner's Cash & Carry,  
21 Pate-Daniels, Ulmer Tobacco.

22 Q. Williamson?

23 A. Excuse me?

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1 Q. Is Williamson considered a  
2 wholesaler or a chain?

3 A. What is Williamson?

4 Q. I don't know. I just thought  
5 that was apparently who -- was it Mr.  
6 Huffman we just got through taking -- went  
7 to work for? Said they had like eighty  
8 stores in Alabama.

9 A. Discount Food Mart owned by John  
10 Williamson.

11 Q. He said it was Williamson Oil. ...

12 A. Right, right. John Williamson  
13 owns Discount Food Marts. I refer to them  
14 as Discount Food Marts.

15 Q. Okay. Before becoming a  
16 training and development manager, what did  
17 you do?

18 A. I was a sales rep for R.J.  
19 Reynolds.

20 Q. What territory?

21 A. Savannah, Georgia.

22 Q. How long?

23 A. About three and a half years.

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1 Q. When did you first go to work  
2 for RJR?

3 A. 1984.

4 Q. Was that in Savannah?

5 A. That's correct.

6 Q. And you started as a sales rep?

7 A. That is correct.

8 Q. At any time during your career  
9 with R.J. Reynolds, have you ever had any  
10 discussions with anyone -- any customer or  
11 any employee of R.J. Reynolds regarding  
12 smoking and health?

13 A. No.

14 Q. No customer has ever inquired at  
15 any time in your career about the health  
16 effects of cigarettes?

17 A. No. They have never inquired to  
18 me.

19 Q. What about ingredients?

20 A. Pardon me?

21 Q. What about ingredients of  
22 cigarettes?

23 A. No.

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1 Q. I want to show you what -- you  
2 can take a minute to look at these. They  
3 were marked as exhibits to Mr. Hinson's  
4 depo, 1 and 2. You can look at both of  
5 them.

6 A. Okay.

7 Q. Take your time.

8 A. (Witness complies.)

9 Q. Have you ever seen either one of  
10 those documents before?

11 A. No, I have not.

12 Q. Have you ever been asked or  
13 asked anyone to identify stores that have  
14 a high concentration of young adult  
15 customers?

16 A. No.

17 Q. Have you ever been asked by  
18 anyone or asked anyone to identify any  
19 geographic areas where there was a high  
20 concentration of young adult shoppers?

21 A. No.

22 Q. Have you ever asked anyone or  
23 been asked by anyone to identify stores

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51938 9021

1 that were in close proximity to colleges  
2 or high schools?

3 A. No.

4 Q. Have you ever heard the term  
5 retail young adult smoker retailer  
6 account?

7 A. No, I have not.

8 Q. On Exhibit 2, under the subject,  
9 it refers to Young Adult Market SIS  
10 Account Grouping. Am I reading that  
11 right?

12 A. I can't read this one. Young  
13 Adult Market SIS Account Grouping, yes,  
14 that's what it says.

15 Q. What does SIS mean?

16 A. Sales information system.

17 Q. What is that?

18 A. That is part of our computer  
19 system.

20 Q. And how does the information get  
21 into that system?

22 A. Just load it in through  
23 Winston-Salem.

1 Q. And where does Winston-Salem, if  
2 you know, get their information? Does it  
3 come back through sales reports or  
4 anything like that?

5 A. Some of that information can be  
6 supplied by sales, such as if a store  
7 opens, we have to take and enter the SIS  
8 number. We enter the address -- the  
9 address, the date, and get the individual  
10 to sign it. We send that in, and then  
11 that information is inputted into the  
12 system.

13 Q. Do y'all gather SIS information  
14 other than when there's a new store  
15 opening?

16 A. We check the stores for their  
17 volume, make sure that the volume is  
18 correct. We sign people on contracts, and  
19 that's entered into the system.

20 Q. Is there an SIS form, or do they  
21 get this information from other types of  
22 paperwork?

23 A. There is a -- there is a form to

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1 enter a store into the system.

2 Q. What is that form called?

3 A. It's called a 7101 form.

4 Q. Are you ever furnished SIS  
5 information?

6 A. Yes, sir.

7 Q. And in what format are you given  
8 this information? Is it in a booklet or  
9 just a single-page printout or --

10 A. It's a laptop. SIS information  
11 is in a laptop. You have to take it --  
12 basically dial up to get SIS information.  
13 You hook up to the host computer. Once  
14 you hook up to the host computer, you're  
15 tied into SIS information.

16 Q. Okay. Do you use that as a part  
17 of your duties and job responsibilities as  
18 division manager?

19 A. Yes.

20 Q. I notice here it says account  
21 grouping, too. Is that a term you're  
22 familiar with, account grouping?

23 A. I've heard that term. I know

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1 what the term means.

2 Q. What is that, or what is an  
3 account grouping?

4 A. You can look at it from this  
5 standpoint, if you take all the lawyers in  
6 Birmingham and set them over here and all  
7 the lawyers in South Alabama and set them  
8 over here, you've got account group one  
9 and account group two.

10 Q. How are they divided up, though?  
11 In other words, do you take like plaintiff  
12 lawyers and defense lawyers and bankruptcy  
13 lawyers or -- you know, in other words, do  
14 you have your account groupings -- what  
15 are the criteria for grouping them?

16 A. I never have set up an account  
17 group. I mean, I've never had to do that.

18 Q. Well, let me ask you this. Have  
19 you ever received information back from  
20 Winston-Salem where they've already  
21 grouped stores into accounts?

22 A. I haven't, no.

23 Q. Do you know of anyone that ever

1 has received that information?

2 A. No.

3 Q. Have you ever looked on the SIS  
4 to determine if they have got accounts  
5 broken up into groups?

6 A. No. Let me explain.

7 Q. Please.

8 A. Let me explain something here.  
9 An account group is just what I said. I  
10 mean, I don't do that. Okay. I mean,  
11 someone -- someone in another house would  
12 utilize that particular function. I mean,  
13 I have no use for that. I don't -- all  
14 the stores that we have are in the system,  
15 and they are listed by name and by SIS  
16 number. I have no need to go in there and  
17 group Birmingham stores or group Clanton  
18 stores. I have no need for that.  
19 Therefore, I never use it. I have never  
20 used a -- never used account groupings. I  
21 mean, there are other ways to pull up  
22 stores in Birmingham. You can pull them  
23 up Birmingham.

1 Q. Right.

2 A. I mean, I have no need for --

3 Q. Well, see --

4 A. -- account groupings.

5 Q. I understand, but you've got to  
6 understand I'm not familiar with the  
7 cigarette business, so I didn't know if  
8 y'all might have a need for grouping them  
9 according to volume or grouping them  
10 according to square footage size or  
11 grouping them according to sales, brand  
12 sales. In other words, it might not be  
13 important to y'all, but -- and it might  
14 not be the purpose of account groupings to  
15 identify, for instance, markets where  
16 Salem cigarettes sold a lot or markets  
17 where Camel cigarettes sold a lot.

18 A. That's above me.

19 Q. Okay. When you say above you,  
20 tell me who you are talking about.

21 A. I mean, whoever -- whoever would  
22 do that is above me. I mean, I don't -- I  
23 don't do anything like that. If I wanted

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1 to pull up a group of stores with volume,  
2 I just go in and put in stores that does a  
3 hundred cartons a week, and, you know, it  
4 pulls up a hundred cartons a week.

5 Q. So you can pull out your own  
6 groups -- I'm not trying to confuse the  
7 term account grouping, but if you wanted  
8 to know volumes and group them into  
9 volumes, you can do that without having  
10 somebody else do it? You can just do that  
11 based on entering into the system whatever  
12 you want to pull back out?

13 A. Right, I can do that. But it's  
14 not account groupings, per se. I mean,  
15 it's just pull up a mass of stores with a  
16 certain criteria.

17 Q. Have you ever seen the term  
18 young adult market used in the SIS at all?

19 A. No, I have not.

20 Q. Are you aware or have you ever  
21 tried to pull out information on young  
22 adult -- on a young adult market or --

23 A. No, sir.



1 Q. -- for a group of younger  
2 smokers, whatever you call them?

3 A. No, sir. Can I clarify  
4 something? This might help you a little  
5 bit.

6 Q. Sure.

7 A. Young adult smokers are smokers  
8 twenty-one years of age and over. Okay?

9 Q. All right.

10 A. Young adult smokers are  
11 twenty-one and over.

12 Q. Okay. Well, even with that  
13 definition, have you ever tried to pull up  
14 a group of twenty-one year old and older  
15 smokers to determine what, you know,  
16 stores they might frequent, in other  
17 words, to maybe help you choose what  
18 demographic factors you would want to use  
19 in promoting a certain brand of cigarette?

20 A. I don't have that capability. I  
21 mean, I don't have that capability to do  
22 that. My computer system is my computer  
23 system. There's nothing in there that

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1 will allow any division manager to do  
2 anything like that. .

3 Q. Are you aware if at any time  
4 those capabilities did exist? Again, I'm  
5 referencing this Exhibit Number 2.

6 A. No, sir.

7 Q. I'm just trying to determine  
8 where he pulled up all these terms and --

9 A. No, sir, I am not aware.

10 Q. So you don't know if other  
11 divisions had those capabilities at some  
12 point in time?

13 A. No, I do not. All I know is  
14 where I've been, what I've done.

15 Q. Is there a definition of young  
16 adult smoker that RJR uses, to your  
17 knowledge?

18 A. I just stated it earlier.

19 Q. Right. I mean, where did you  
20 get that from?

21 A. That's the way RJR looks at  
22 young adult smokers, twenty-one through  
23 twenty-five.

1 Q. And where did that information  
2 come from? Is that something you were  
3 told at a sales conference, or did you --  
4 were you furnished literature on that?

5 A. No. We were told that.

6 Q. By whom?

7 A. By our regional manager, by  
8 division manager.

9 Q. Who is your regional manager  
10 that told you that?

11 A. Now, I have had three regional  
12 managers. Roy Dodson told me that.

13 Q. All right.

14 A. Bob Rissler has told me that.

15 Q. Who is that, Bob Rissler?

16 A. Rissler.

17 Q. You will have to help her spell  
18 that, and me, too.

19 A. R-i-s-s-l-e-r.

20 Q. And who else?

21 A. Those two, those two.

22 Q. Is Roy Dodson still with RJR, to  
23 your knowledge?

1 A. To my knowledge, he is, yes.  
2 Q. Do you know in what capacity?  
3 A. Regional manager.  
4 Q. What region?  
5 A. He's in Texas somewhere. Okay.  
6 Q. What about Bob Rissler?  
7 A. In Atlanta.  
8 Q. Is he also a regional manager?  
9 A. Yes, he is.  
10 Q. What about division managers  
11 that may have told you that or that did  
12 tell you that, if you recall?  
13 A. Ray Hilliard.  
14 Q. Where is he located?  
15 A. In Macon, Georgia.  
16 Q. Is he still a division manager?  
17 A. Yes, he is.  
18 Q. Now, in what context were they  
19 describing for you the young adult smoker?  
20 In other words, how did that conversation  
21 come up that they had to classify or put  
22 in parameters what group the young adult  
23 smokers were?

1 A. We have brands that have -- that  
2 appeal to twenty-one to twenty-five and  
3 thirty and older, and Winston appealed to  
4 thirty and older, and Camel, twenty-one to  
5 twenty-five.

6 Q. All right. Did this information  
7 -- in other words, did they just tell you  
8 that -- or how did that come about? In  
9 other words, how did that information come  
10 up, or was it at a sales meeting where  
11 they told you this?

12 A. Sales meeting.

13 Q. Was it something that was told  
14 to a group of people?

15 A. Yes.

16 Q. How many folks were there, do  
17 you think?

18 A. I have no idea.

19 Q. Is this something that would  
20 come up regularly? I think you mentioned  
21 that you had been told this by two or  
22 three regional managers and at least one  
23 division manager?

1 A. I worked for Ray Hilliard as a  
2 -- when I was a training and development  
3 manager. Bob Rissler was my regional  
4 manager when I first started. When I went  
5 to work for Ray Hilliard, Roy Dodson was  
6 the regional manager, and I'm currently  
7 working for Bob Rissler right now.

8 Q. All right. Do you remember  
9 when the first time you were told that  
10 Camels -- or what were you told about  
11 Camels in the twenty-one to  
12 twenty-five-year-old market?

13 A. Just what I just said. Camels  
14 appealed to twenty-one to  
15 twenty-five-year-old people. Winstons  
16 appealed to people thirty and older.

17 Q. When were you first told that,  
18 if you recall?

19 A. I can't honestly say.

20 Q. I mean, is that information that  
21 y'all get from time to time?

22 A. I haven't gotten it, no.

23 Q. All right. Do you know if

1 that's changed from the first time you  
2 were told that?

3 A. Not to my knowledge, it hasn't  
4 changed.

5 Q. How do you use that? Or in  
6 other words, do you know why you were told  
7 that? You know, is it something you were  
8 -- information you were given to allow you  
9 to use it in some way as a manager or  
10 salesperson when calling on accounts?

11 MR. STUHAN: Objection, calls  
12 for speculation. He can't possibly  
13 comment on what someone else was thinking  
14 when that person communicated that or any  
15 other information to him, unless that  
16 person told him what the reason was.

17 Q. (BY MR. ESDALE) You can answer.

18 A. The reason why we had that  
19 information was to determine how to load  
20 our displays. That's all it was.

21 Q. Okay. And then when you say how  
22 to load your displays, tell me what you  
23 mean by that.

1 A. When you have two displays and  
2 two full price displays in a store, and if  
3 it's a twenty-one to twenty-five-year-old  
4 market, then Camels go first, and Winstons  
5 go second. And if it's older, then vice  
6 versa.

7 Q. How do you determine what the  
8 market is for a store?

9 A. Excuse me?

10 Q. I think you just said if it's a  
11 twenty-one to twenty-five-year-old market,  
12 then Camels would go first?

13 A. Yes.

14 Q. How do you determine if it's a  
15 twenty-one to twenty-five-year-old market?

16 A. Basically by asking the owner.

17 Q. Is that something -- do y'all  
18 have paperwork that your salesmen go out  
19 and gather that information and send to  
20 you as a division manager?

21 A. No.

22 Q. Are the individual sales people  
23 then responsible for asking the owner



1 about the demographics of a particular  
2 store?

3 A. Yes.

4 Q. And is there a guideline or  
5 sales booklet or something that y'all have  
6 that tells them how to use that  
7 information?

8 A. No.

9 Q. Is that something then that they  
10 just have to rely on their training for?

11 A. Training and the individual that  
12 owns the store.

13 Q. All right. But what I'm saying  
14 is, assuming the individual says, okay,  
15 we've got a twenty-one to  
16 twenty-five-year-old market here, and how  
17 is the RJR salesperson going to know what  
18 to do with that information?

19 A. If my memory serves me  
20 correctly, I said that, when they find  
21 that out, that is the way they load their  
22 displays. If it's twenty-one to  
23 twenty-five, then Camels get the number

1 one position, and Winstons get the second  
2 position.

3 Q. My question is, how does the  
4 salesman know to do that?

5 A. They were told that.

6 Q. And that's why I'm asking. Were  
7 they -- is this something that they were  
8 taught during training, or is there a  
9 piece of paper that is distributed that  
10 says that tells them that, or who told  
11 them that?

12 A. Their managers told them that.

13 Q. Okay. Is that the manager's  
14 responsibility then as a part of the  
15 training to pass this information along as  
16 to what -- and again, I'm just using this  
17 as an example -- what demographics are  
18 involved with what products?

19 A. Repeat that. I'm lost now.  
20 Repeat that.

21 Q. All right. Is that part of the  
22 manager's responsibility in training to  
23 teach the sales people what demographics

1 are associated with certain brands in  
2 order that they might know how to load  
3 displays or -- and it might -- I don't  
4 know. Maybe it goes into other things  
5 like promotional advertising. I mean, do  
6 the twenty-one to twenty-five-year-old  
7 young adult smokers prefer hats and  
8 T-shirts over two for one packs, if you  
9 know?

10 MR. STUHAN: Objection. That is  
11 just so hopelessly complex and compound a  
12 question. Started out on the east side  
13 and ended up on the west side after going  
14 north and south. I think that question is  
15 just so hopefully complicated that this  
16 witness can't possibly answer it. But if  
17 he wants to take a shot at it, that's his  
18 privilege.

19 A. Like I said earlier, I'm lost.  
20 I'm lost right now.

21 Q. (BY MR. ESDALE) Well --

22 A. Okay.

23 Q. We'll go real simple, I guess.

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1 A. Okay.

2 Q. When you were involved in  
3 training and development, what would you  
4 teach the salesmen?

5 A. How to determine low stocks and  
6 out of stocks.

7 Q. And what is a low stock?

8 A. A low stock is when you do not  
9 have sufficient merchandise on hand to  
10 meet the consumer demands of that  
11 particular store.

12 Q. Okay. And what is a -- I assume  
13 out of stock --

14 A. It's not there.

15 Q. And y'all have to teach them  
16 this?

17 A. Yes, sir. There's a cigarette  
18 ordering book that we basically supply the  
19 customers with. And we --

20 Q. A cigarette what?

21 A. Ordering book, which we supply  
22 the customers with, if they need it, and  
23 also we supply the reps with. Basically

1 all this is is list all the brands that is  
2 made by all the cigarette companies, and a  
3 method to determine your inventory base  
4 and to determine lead time and to  
5 determine the amount of product you would  
6 need to satisfy your consumers.

7 Q. And does this book take into  
8 account the types of consumers?

9 A. No.

10 Q. So in addition to teaching them  
11 about low stock and out of stock,  
12 apparently based on what you've told me,  
13 somebody tells them about the types of  
14 brands that young adult smokers prefer?

15 A. Yes.

16 Q. Who teaches the sales people  
17 that?

18 A. The managers.

19 Q. And you're saying division  
20 manager?

21 A. Division manager. Then it's  
22 filtered down to the entry level manager.  
23 Let me clarify something, and maybe we can

1 go on with this. Okay. Right now we have  
2 different types of markets. You've got  
3 Winston markets -- you've got Winston  
4 markets. You've got Camel markets.  
5 You've got Doral markets. And that's the  
6 way we do things now.

7 Q. When you were a manager training  
8 people about this and teaching them about  
9 the groups, where did you receive your  
10 information? In other words, who told  
11 you? Again, I'm not trying to -- I assume  
12 it's going to be Roy Dodson or Bob Rissler  
13 or Mr. Hilliard. But are they the ones  
14 that told you that information? Is that  
15 where you got the information to pass on  
16 to the other people that you trained?

17 A. Yes.

18 Q. And over a -- now, you said now  
19 there's a Winston market, a Camel market,  
20 and a Doral market?

21 A. Yes.

22 Q. And how are those different than  
23 what we've just been talking about?

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1 A. They aren't different. They  
2 determines, for instance, a Winston  
3 aren't. I don't see them being any  
4 different.

5 Q. Then what are the -- what  
6 market?

7 A. It comes from Winston-Salem.  
8 They tell us that, your market is this,  
9 or, your market is that.

10 Q. What have they told you about  
11 the Winston market?

12 A. We are a Winston market now.  
13 Atlanta is a Winston region. Birmingham  
14 is a Winston, Doral market.

15 Q. All right. Do they tell you  
16 anything other than that about, you know,  
17 the things that we talked about, what age  
18 groups or other demographic factors about  
19 what makes a market a Winston market other  
20 than just sales?

21 A. No.

22 Q. Do you still -- now, if you've  
23 identified a store with -- through the

1 owner telling you that he has a lot of  
2 twenty-one to twenty-five-year-old  
3 smokers, do you put Winstons up there  
4 first?

5 A. No. You have the autonomy to  
6 put Camels there first.

7 Q. Who determines that?

8 A. Sales rep does by asking those  
9 questions.

10 Q. Okay. To your knowledge, is  
11 that the way it's been done throughout the  
12 entire time you've been an employee with  
13 R. J. Reynolds?

14 A. To my knowledge, yes.

15 Q. Now, are y'all still furnished  
16 information on the age groups of smokers  
17 that prefer Camel cigarettes?

18 A. No. It's twenty-one to  
19 twenty-five.

20 Q. I mean, is that something that  
21 you're -- that comes to you once a month?

22 A. No. That's -- that's the way  
23 it's been, and that's the way it still is.



1 Q. Okay. And I assume if that were  
2 to change, you would rely on someone to  
3 inform you of that?

4 A. Or some type of communication,  
5 yes.

6 Q. Right. That's what I'm talking  
7 about.

8 A. Yes.

9 Q. And what other types of  
10 communication or what types of  
11 communication would you expect that  
12 information to come through, or would it  
13 be a memo or something over the computer  
14 system?

15 A. It could be E-mail. It could be  
16 a memo.

17 Q. Okay.

18 A. It could be a voice mail. It  
19 could be a communication from a manager  
20 like the regional manager during a  
21 meeting, so there's different means of  
22 communication.

23 Q. Okay. And as we sit here today,

1 it's still your understanding that Camels  
2 is the RJR brand that appeals most to  
3 twenty-one through twenty-five-year-old  
4 smokers?

5 MR. STUHAN: Objection. That's  
6 been asked and answered.

7 A. That is correct.

8 Q. (BY MR. ESDALE) Other than  
9 Camels, is there any other information on  
10 -- or demographic information that you  
11 pass along to your sales force regarding  
12 certain brands of cigarettes?

13 A. Nothing other than what I told  
14 you earlier.

15 Q. Okay. For instance, do y'all  
16 ever put Salems in a -- on the top row of  
17 a display?

18 A. We could, yes.

19 Q. Do you know of any examples  
20 where that has been done?

21 A. Yes.

22 Q. Do you know why that was done?

23 A. Probably because Newport and

1 Kool is highlighted.

2 Q. And you say Newport and Kool.

3 Those aren't RJR products, are they?

4 A. No, they are not.

5 Q. And how would you get the  
6 information to know that Newport and Kool  
7 were highlighted? Is that on the printout  
8 or --

9 A. No. You can walk in the store  
10 and see it. Everything happens at a store  
11 level. I mean, you ask questions, and  
12 that's the way to determine what they need  
13 to do based on what communication is  
14 provided to them by the owner, and also by  
15 looking at the displays in the store,  
16 competing displays.

17 Q. Okay. Are you furnished any  
18 information on what type of customers or  
19 background on the customers that prefer  
20 Doral?

21 A. No.

22 Q. What about Salem?

23 A. We try to match up with Newport

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1 and try to match up with Kool.

2 Q. What do you try to match up  
3 Doral with?

4 A. Doral, GPC, and Basic.

5 Q. Camel?

6 A. Excuse me?

7 Q. Camel? What do you try to match  
8 up Camel with?

9 A. Marlboro.

10 Q. And Winston?

11 A. Marlboro.

12 Q. Is it my understanding then that  
13 the individual sales representatives have  
14 the leeway to match those up the best way  
15 they see fit?

16 A. To a degree, yes. To a degree,  
17 yes.

18 Q. What parameters do they have on  
19 them?

20 A. As I said earlier, we are a  
21 Winston market, and we want to highlight  
22 Winstons. But if the salesperson feels  
23 very strongly that another brand should be

1 highlighted in that store, then they can  
2 do so.

3 Q. In other words, I mean -- and I  
4 might be misunderstanding, but if you went  
5 into a store and saw Newports and Kools  
6 being highlighted in a store, you're not  
7 going to put Winston up still, are you?

8 A. We could or we could not.

9 Q. And that's what you're talking  
10 about, that it's up to the individual  
11 salesperson, his responsibility to  
12 determine what needs to go in the stores?

13 A. For the most part, yes.

14 Q. And do those things like  
15 highlighting certain brands have a  
16 tendency to increase sales in the stores  
17 y'all do that in?

18 A. I don't know. I wish -- I mean,  
19 I wish I knew. I don't know.

20 Q. Is that why you do that?

21 A. We do it to match up the  
22 competition basically. That's why we do  
23 it.

1 Q. When you say match up the  
2 competition, are you just talking about  
3 just so they'll see it, or are you talking  
4 about trying to compete on a sales level  
5 with it?

6 A. Trying to compete from a  
7 presence standpoint.

8 Q. To your knowledge, did any of  
9 the -- does any of the SIS information  
10 that is kept on these stores have a  
11 category for the age of the market of  
12 these --

13 A. No.

14 Q. -- individual stores?

15 A. No.

16 Q. Other than the 7101 form, are  
17 there any other forms that you're aware of  
18 that are used to provide information to  
19 Winston-Salem for the SIS?

20 A. Yes.

21 Q. What other forms?

22 A. Contracts.

23 Q. And tell me exactly what you're

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1 speaking of when you say contracts.

2 A. We have contracts that we sign  
3 with retail stores, and those contracts  
4 entail where our displays will go within  
5 that particular store.

6 Q. Okay.

7 A. And also entails where  
8 competition will go in that store, and the  
9 compensation.

10 Q. And that is contained in that  
11 contract? Y'all send that contract to  
12 Winston-Salem?

13 A. Yes. We send the contract to  
14 what we call the ROU.

15 Q. The what?

16 A. ROU.

17 Q. What does that stand for?

18 A. Regional operations unit.

19 Q. And what do they do with it?

20 A. They entail -- input the  
21 information into the system which filters  
22 up to Winston and then filters back to us.

23 Q. Okay. Other than the 7101 form

1 and the contract, are there any other  
2 documents that you are aware of that are  
3 used to furnish information to the SIS?

4 A. No.

5 Q. Are there any forms that any of  
6 the salesmen use for their sales or any  
7 other purpose that contain information  
8 that was obtained from the merchants?

9 A. No.

10 Q. In other words, where -- you  
11 know, you mentioned earlier that the  
12 information they would have to get from  
13 the retailer would be what type of age  
14 group, that's not documented anywhere,  
15 though?

16 A. No.

17 Q. That's just something that the  
18 salesman would go in there, find out, and  
19 then respond accordingly?

20 A. Yes.

21 Q. Have you made arrangements to  
22 attend any trials that are taking place --

23 A. No.



1 Q. -- in Alabama?

2 A. No.

3 Q. Do you have any contact at all  
4 with Petrey Wholesale in your position  
5 now?

6 A. Can I clarify?

7 Q. Yes.

8 A. Do you mean Petrey?

9 Q. Petrey.

10 A. No, I don't have any contact  
11 with Petrey. I don't have any direct  
12 contact with Petrey.

13 Q. Have you at any time?

14 A. No.

15 Q. What about Beeline Stores?

16 A. I don't have any direct contract  
17 -- contact with Beeline. I have gone into  
18 their stores because some of their stores  
19 at one time resided in my division  
20 manager's.

21 Q. Okay. Do you have any  
22 responsibility now for any Beeline Stores  
23 at all, whether it be through your sales

1        reps or anybody else?

2            A.     No.

3            Q.     Is that also true for Petrey?

4            A.     I don't have any direct contact  
5 with Petrey. I think I need to clarify.  
6 Petrey services stores that we may call  
7 on. Okay. But I don't have any direct  
8 contact with Petrey.

9            Q.     But they do service stores that  
10 you call on?

11          A.     Right.

12          Q.     Does Petrey buy directly from  
13 R.J. Reynolds?

14          A.     Yes, they do.

15          Q.     Is that the same for Beeline, if  
16 you know?

17          A.     Beeline does not buy direct.

18          Q.     How do they get their  
19 cigarettes?

20          A.     They get their cigarettes -- as  
21 far as I know, when I had -- when I had  
22 some of the stores, they purchased the  
23 cigarettes from Petrey.

1 Q. Okay.

2 MR. ESDALE:, I think that's all  
3 I've got. Give me a second.

4 Q. (BY MR. ESDALE) Just a couple  
5 more real quick. Aside from point of  
6 purchase display, what other promotional  
7 activities are the salesmen under you  
8 responsible for?

9 A. I don't understand the question.

10 Q. Well, do they go in the stores  
11 and help set up a -- whether it's a buy  
12 one, get one free or --

13 A. We try to get the retailer to do  
14 that

15 Q. Does the salesman do that?

16 A. We try to get the retailer to do  
17 it. There may be times that a salesman  
18 may have to assemble a display and put it  
19 up to show the retailer how to do it the  
20 first time or maybe the second time.

21 Q. But I mean, the promotion  
22 itself, for instance, a two for one, is  
23 that something that a salesman would go

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1 around and promote to the retailer and  
2 say, look, we're going to run a two for  
3 one special, we'll reimburse you or give  
4 you packs for half price or whatever?

5 A. The way we do things is we have  
6 promotional calendars, and those  
7 promotional calendars tell the retailer  
8 what promotions he or she will be  
9 receiving.

10 Q. All right. And then do the  
11 sales -- does the sales department have  
12 any responsibilities with assisting in the  
13 promotions?

14 A. You said sales department. What  
15 are you referring to?

16 Q. Well, the sales department.

17 A. Sales reps, is that what you're  
18 referring to?

19 Q. Sales reps.

20 A. Okay. As I said earlier, those  
21 promotions, we try to get the retailer to  
22 put them up. If you're asking me do we  
23 tell the retailer what they are going to

1 get, yes. Do they agree to it, yes, they  
2 do. They know when they are going to get  
3 it, and they are supposed to know where  
4 they are going to put it.

5 Q. Is that something that is  
6 covered in the contract?

7 A. Yes.

8 Q. Do they have to promote -- in  
9 other words, if y'all run a two for one on  
10 Vantage, does the retailer have to put up  
11 the displays and sell them for two for  
12 one? I mean, is that the kind of stuff  
13 that is covered in the contract?

14 A. We would like for them to. We  
15 would like for them to.

16 Q. Do they have a contractual duty  
17 to as a part of that contract, if you  
18 know?

19 MR. STUHAN: Objection to the  
20 extent that it calls for a legal  
21 conclusion. This witness is obviously not  
22 in the position to answer that question.

23 A. What -- repeat the question.

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1 Q. (BY MR. ESDALE) Do they have a  
2 contractual duty, as far as your  
3 understanding goes, to agree to  
4 promotional activities that R.J. Reynolds  
5 gives them?

6 A. What we do is this, when we sign  
7 a contract, we provide them resources to  
8 help them grow their business. Okay. We  
9 have promotions, buy two, get one free,  
10 something along that line, and we tell the  
11 individuals what they are. Okay. They  
12 get to choose the quantities that they  
13 want. Okay. And the promotions are  
14 shipped in on a monthly basis or maybe a  
15 bimonthly basis.

16 Q. Is Winston-Salem responsible for  
17 putting together the promotional calendar?

18 A. All the promotional calendar is  
19 is something to inform the retailer of  
20 what they're going to get. Okay. We get  
21 a brochure, a quarterly brochure, that  
22 tells us what promotions we're going to  
23 have.

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1 Q. Who is we?

2 A. We -- we being the salesmen.  
3 Division manager, the sales reps, the  
4 retail reps, and retail manager.

5 Q. Y'all get a quarterly brochure?

6 A. Yes.

7 Q. And then do y'all turn around  
8 and give that to the retailers, or do you  
9 just tell them what the promotion is?

10 A. We basically walk in and show  
11 them what they are going to get.

12 MR. ESDALE: Okay. I think  
13 that's all I've got.

14 MR. STUHAN: I have no  
15 questions.

16 MR. WILLIAMS: No questions.

17 FURTHER DEPONENT SAITH NOT  
18  
19  
20  
21

22

23

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C E R T I F I C A T E

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, TERRY CRUTCHFIELD, R.P.R.,  
HEREBY CERTIFY THAT THE ABOVE AND  
FOREGOING DEPOSITION WAS TAKEN DOWN BY  
ME ON COMPUTERIZED STENOTYPE, AND THE  
QUESTIONS AND ANSWERS THERETO WERE  
TRANSCRIBED BY ME, AND THAT THE  
FOREGOING REPRESENTS A TRUE AND  
CORRECT TRANSCRIPT OF THE DEPOSITION  
GIVEN BY WITNESS UPON SAID HEARING.

I FURTHER CERTIFY THAT I AM  
NEITHER OF COUNSEL, NOR OF KIN TO THE  
PARTIES IN THE ACTION, NOR AM I IN ANYWISE  
INTERESTED IN THE RESULT OF  
SAID CAUSE.

TERRY E. CRUTCHFIELD  
COMMISSIONER

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51938 9060



-*-	31:10 acting (1) 7:2 ACTION (1) 56:17	bankruptcy (1) 21:12 BARBOUR (1) 1:2	Cash (1) 14:20 category (1) 46:11	consumer (1) 36:10 consumers (2) 37:6,8
'88 (1) 11:20 '92 (2) 11:20,21	activities (2) 51:7 54:4 addition (1) 37:10	base (1) 37:3 based (3) 24:11 37:12 43:13	certain (5) 24:16 25:19 35:1 42:12 45:15	contact (6) 49:3,10,12,17 50:4,8
-1-	address (2) 19:8,9 adult (16) 17:14,20 18:5 18:9,13 24:18,22,22 25:7 25:10 26:16,22 28:19,22 35:7 37:14	Basic (1) 44:4 basis (2) 54:14,15 BEASLEY (1) 5:4 becoming (3) 10:2,12 15:15	certify (3) 7:2 56:7,15 chain (5) 12:21 13:8 14:8 14:10 15:2	contain (1) 48:7 contained (1) 47:10
1 (1) 17:4 125 (1) 6:7 12:00 (2) 2:13 7:10 15 (1) 3:4 1984 (1) 16:3 1988 (1) 3:4 1992 (2) 8:10 10:3 1999 (4) 1:15 2:12 3:8 7:30	advertising (1) 35:5 advised (1) 3:9 again (3) 26:4 34:16 38:11 age (5) 25:8 39:17 40:16 46:11 48:13 agree (2) 53:1 54:3 AGREED (3) 2:2,15,23 al (1) 1:9 Alabama (5) 1:2 2:11 3:3 5:17 8:8 7:4,9 9:6,7 9:7 15:8 21:7 49:1 56:2	BEHALF (3) 5:3,11 6:4 below (1) 9:12 best (1) 44:14 better (1) 10:12 between (1) 2:3 bimonthly (1) 54:15 Birmingham (14) 2:11 5:17 7:9 8:7 9:5 11:23 12:3 14:9,13 21:6 22:17 22:22,23 39:13 bit (1) 25:5 Bob (6) 27:14,15 28:6 30:3,7 38:12	chains (6) 12:18 13:17 13:21,22,23 14:2 change (1) 41:2 changed (2) 31:1,4 check (1) 19:16 Chevron (1) 13:11 choose (2) 25:17 54:12 cigarette (5) 23:7 25:19 36:17,20 37:2 cigarettes (9) 16:16,22 23:16,17 40:17 42:12 50:19,20,23 CIRCUIT (1) 1:1 Civil (2) 3:3 7:4 Clanton (1) 22:17 clarify (4) 25:3 37:23 49:6 50:5 Clark (3) 2:10 5:15 7:8 classify (1) 28:21 Cleveland (1) 5:23 close (1) 18:1 colleges (1) 18:1 commencing (2) 2:12 7:10	Contract (9) 47:11,11,13 48:1 49:16 53:6,13,17 54:7 contracts (5) 19:18 46:22 47:1,2,3 contractual (2) 53:16 54:2 conversation (1) 28:20 correct (11) 8:20 9:1,13 9:17,22 10:1 16:5,7 19:18 42:7 56:13 correctly (1) 33:20 counsel (5) 2:4,16,17 7:5 56:16
-2-	amount (1) 37:5 answer (1) 31:17 35:16 53:22 answered (1) 42:6 ANSWERS (1) 56:10 ANYWISE (1) 56:17 appeal (1) 29:2 appealed (3) 29:3 30:14 30:16 appeals (1) 42:2 APPEARING (3) 5:3 5:17 6:4 areas (1) 17:19 arrangements (1) 48:21 Aside (1) 41:5 assemble (1) 51:18 assign (1) 2:18 assisting (1) 52:12 associated (1) 35:1 assume (4) 9:12 36:12 38:11 41:1 assuming (1) 33:14 Atlanta (2) 28:7 39:13 attend (1) 48:22 autonomy (1) 40:5 availability (1) 11:1 Avenue (2) 5:22 6:7 aware (5) 24:20 26:3,9 46:17 48:2	brand (4) 23:11 25:19 42:2 44:23 brands (6) 29:1 35:1 37:1 37:14 42:12 45:15 brochure (3) 54:21,21 55:5 broken (1) 22:5 BROOKS (1) 5:14 Bruno's (3) 12:22 13:19 13:22 Building (3) 2:10 5:15 7:8 business (2) 23:7 54:8 buy (4) 50:12,17 51:11 54:9	commenced (1) 31:13 Commerce (1) 5:7 Commissioner (6) 1:18 2:8 3:1 6:12 7:2 56:22 communicated (1) 31:14 communication (6) 41:4,10,11,19,22 43:13 companies (1) 37:2 company (3) 1:9 8:2 12:5 compensation (1) 47:9 compete (2) 46:4,6 competing (1) 43:16 competition (3) 45:22 46:2 47:8 complex (1) 35:11 complicated (1) 35:15 complicates (1) 17:8 compound (1) 35:11 computer (6) 18:18 20:13,14 25:22,22 41:13 COMPUTERIZED (1) 56:9 concentration (2) 17:14 17:20 conclusion (1) 53:21 conference (1) 27:3 confuse (1) 24:6 considered (2) 14:13 15:1	conversations (1) 28:20 correct (11) 8:20 9:1,13 9:17,22 10:1 16:5,7 19:18 42:7 56:13 correctly (1) 33:20 counsel (5) 2:4,16,17 7:5 56:16 COUNTY (2) 1:2 56:3 couple (1) 51:4 course (2) 9:9 10:22 Court (4) 1:1 3:10,11 7:1 covered (2) 53:8,13 criteria (2) 21:15 24:16 CROW (1) 5:4 Crutchfield (7) 1:18 2:7 3:5 6:12 7:1 56:6,21 customer (2) 16:10,14 customers (6) 12:12 17:15 36:19,22 43:18,19 CV-96-215 (1) 1:4
-3-	-4-	-C-	-D-	d (2) 3:2 4:1 date (2) 7:3 19:9 Defendants (3) 1:10 5:11 6:4 defense (1) 21:12 definition (2) 25:13 26:15 degree (2) 44:16,16 delivering (1) 3:5 demands (1) 36:10 demographic (3) 25:18 39:18 42:10 demographics (3) 33:1 34:17,23 Dennis (5) 1:14 2:6 7:11 7:16,22 department (3) 52:11 52:14,16 depend (1) 10:18 depo (1) 17:4 DEPONENT (1) 55:17 deposition (6) 1:13 2:4 2:20 3:1 56:8,13 describing (1) 28:19
-4-	-5-	-C-	-D-	-D-
-5-	-7-	-C-	-D-	-D-
-7-	-8-	-C-	-D-	-D-
-8-	-9-	-C-	-D-	-D-
-9-	-A-	-C-	-D-	-D-
-A-	-B-	-C-	-D-	-D-
-B-	-C-	-C-	-D-	-D-
-C-	-D-	-C-	-D-	-D-
-D-	-E-	-C-	-D-	-D-
-E-	-F-	-C-	-D-	-D-
-F-	-G-	-C-	-D-	-D-
-G-	-H-	-C-	-D-	-D-
-H-	-I-	-C-	-D-	-D-
-I-	-J-	-C-	-D-	-D-
-J-	-K-	-C-	-D-	-D-
-K-	-L-	-C-	-D-	-D-
-L-	-M-	-C-	-D-	-D-
-M-	-N-	-C-	-D-	-D-
-N-	-O-	-C-	-D-	-D-
-O-	-P-	-C-	-D-	-D-
-P-	-Q-	-C-	-D-	-D-

determine [12] 22:4  
25:15 26:7 31:19 32:7,14  
36:5 37:3,4,5 43:12 45:12  
determines [2] 39:5 40:7  
develop [1] 10:11  
development [10] 10:4  
10:10 11:6,12,16,23 12:9  
15:16 30:2 36:3  
dial [1] 20:12  
different [5] 38:2,22  
39:1,3 41:21  
direct [5] 49:11,16 50:4,7  
50:17  
directly [1] 50:12  
Discount [3] 15:9,13,14  
discussions [1] 16:10  
display [4] 42:17 51:6  
51:18  
displays [10] 31:20,22  
32:1,2 33:22 35:3 43:15  
43:16 47:4 53:11  
distributed [1] 34:9  
divided [1] 21:10  
division [20] 8:4,6 9:4,5  
9:11,18 10:3 11:13  
20:18 26:1 27:8 28:10,16  
29:23 32:20 37:19,21  
49:19 55:3  
divisions [3] 11:16 12:7  
26:11  
documented [1] 48:14  
documents [2] 17:10  
48:2  
Dodson [4] 27:12,23 30:5  
38:12  
done [4] 26:14 40:11  
42:20,23  
Doral [6] 38:5,20 39:14  
43:20 44:3,4  
down [2] 37:22 56:8  
duly [1] 7:17  
during [3] 16:8 34:8  
41:20  
duties [1] 10:8 20:17  
duty [2] 53:16 54:2

---

**-E-**

E [13] 1:18 2:7 3:5 4:1 5:1  
5:1 6:1,12 7:1 56:1,1,21  
E-mail [1] 41:15  
east [2] 9:8 35:12  
effective [1] 3:4  
effects [1] 16:16  
eight [1] 8:16  
eighty [1] 15:7  
either [1] 17:9  
employed [2] 7:23 8:1  
employee [2] 16:11  
40:12  
employees [3] 8:11 11:4  
11:7  
ended [1] 35:13

entail [2] 47:4,20  
entails [1] 47:7  
enter [3] 19:7,8 20:1  
entered [1] 19:19  
entering [1] 24:11  
entire [1] 40:12  
entry [1] 37:22  
ESDALE [11] 3:6 4:5  
5:6 7:20 31:17 35:21 42:8  
51:2,4 54:1 55:12

et [1] 1:9  
Eufaula [1] 6:8  
evidence [1] 2:21  
exactly [1] 46:23  
examination [3] 4:3  
7:12,20  
examined [1] 7:17  
example [2] 13:17 34:17  
examples [4] 13:3 14:3  
14:18 43:19  
Excuse [3] 14:23 32:9  
44:6  
Exhibit [2] 18:8 26:5  
exhibits [1] 17:3  
exist [1] 28:4  
expect [1] 41:11  
explain [2] 22:6,8  
extent [1] 53:20

---

**-F-**

F [1] 56:1  
factor [2] 25:18 39:18  
familiar [3] 12:14 20:22  
23:6  
far [2] 50:21 54:2  
feels [1] 44:22  
filed [1] 3:11  
filing [1] 2:23  
filtered [1] 37:22  
filters [2] 47:21,22  
fine [1] 13:16  
first [1] 7:17 16:1 30:4,9  
30:17 31:1 32:4,12 40:4,6  
51:20  
fit [1] 44:15  
folks [1] 29:16  
following [1] 7:13  
follows [1] 7:18  
Food [4] 14:5 15:9,13,14  
footage [1] 23:10  
force [1] 42:11  
foregoing [3] 7:5 56:8  
56:12  
form [6] 19:20,23 20:2,3  
46:16 47:23  
format [2] 11:3 20:7  
forms [3] 46:17,21 48:5  
fortunate [1] 11:9  
Franklin [3] 2:9 5:12 7:7

free [2] 51:12 54:9  
frequent [1] 25:16  
full [1] 32:2  
function [1] 22:12  
furnish [1] 48:3  
furnished [4] 20:4 27:4  
40:15 43:17

---

**-G-**

G [2] 5:20 6:6  
gather [2] 19:13 32:19  
general [2] 8:18,19  
geographic [2] 9:4 17:19  
Georgia [5] 9:9,16 14:10  
15:21 28:15  
given [3] 20:7 31:8 56:14  
goes [2] 35:4 54:3  
gone [1] 49:17  
GPC [1] 44:4  
GRAHAM [2] 3:6 5:6  
grounds [1] 2:19  
group [13] 21:8,9,17 22:9  
22:17,17 24:1,8 25:1,14  
28:22 29:14 48:14  
grouped [1] 21:21  
grouping [10] 18:10,13  
20:21,22 21:3,15 23:8,9  
23:11 24:7  
groupings [5] 21:14  
22:20 23:4,14 24:14  
groups [5] 22:5 24:6 38:9  
39:18 40:16  
grow [1] 54:8  
guess [2] 11:20 35:23  
guideline [1] 33:4

---

**-H-**

H [1] 5:14  
half [2] 15:23 52:4  
hand [1] 36:9  
Happy [1] 13:10  
hats [1] 35:7  
health [2] 16:12,15  
heard [2] 18:4 20:23  
HEARING [1] 56:14  
held [1] 8:8  
help [5] 25:4,17 27:17  
51:11 54:8  
hereby [2] 3:5 56:7  
high [3] 17:14,19 18:2  
highlight [1] 44:21  
highlighted [4] 43:1,7  
45:1,6  
highlighting [1] 45:15  
Hightower [5] 1:14 2:6  
7:11,16,22  
Hilliard [6] 9:20,21  
28:13 30:1,5 38:13  
Hinson's [1] 17:3

hires [3] 10:14,17,22  
HOLLIS [1] 5:13  
honestly [1] 30:19  
hook [2] 20:13,14  
hopefully [1] 35:15  
hopelessly [1] 35:11  
HORACE [1] 6:6  
host [2] 20:13,14  
house [1] 22:11  
Huffman [1] 15:6  
hundred [2] 24:3,4

---

**-I-**

idea [1] 29:18  
identified [1] 39:23  
identify [4] 17:13,18,23  
23:15  
III [1] 6:6  
important [1] 23:13  
incorporate [1] 9:5  
increase [1] 45:16  
independent [4] 12:17  
13:3 14:13,15  
individual [7] 19:9  
32:22 33:11,14 44:13  
45:10 46:14  
individuals [1] 54:11  
inform [2] 41:3 54:19  
information [41] 18:16  
18:20 19:2,5,11,13,21  
20:5,8,10,12,15 21:19  
22:1 24:21 27:1 29:6,9  
30:20 31:8,15,19 32:19  
33:7,18 34:15 38:10,14  
38:15 40:16 41:12 42:9  
42:10 43:6,18 46:9,18  
47:21 48:3,7,12  
ingredients [2] 16:19  
16:21  
input [1] 47:20  
inputted [1] 19:11  
inquired [2] 16:14,17  
instance [4] 23:15 39:5  
42:15 51:22  
INTERESTED [1]  
56:18  
inventory [1] 37:3  
involved [3] 11:5 34:18  
36:2  
itself [1] 51:22

---

**-J-**

JEFFERSON [1] 56:3  
Jemison [3] 9:6,12 13:11  
Jerry's [1] 13:6  
job [2] 10:8 20:17  
John [3] 8:22 15:9,12  
JONES [1] 5:19  
June [4] 1:15 2:12 3:8  
7:10

kept [1] 46:10  
KIN [1] 56:16  
kind [1] 53:12  
knew [1] 45:19  
knowledge [7] 26:17  
27:23 28:1 31:3 40:10,14  
46:8  
Kool [4] 43:1,2,6 44:1  
Kools [1] 45:5

---

**-L-**

L [1] 1:6  
L.L.C [3] 2:10 5:12 7:7  
Lakeside [1] 5:22  
laptop [2] 20:10,11  
law [2] 2:9 7:6  
lawyers [5] 21:5,7,12,12  
21:13  
lead [1] 37:4  
least [1] 29:22  
LEE [1] 5:13  
leeway [1] 44:14  
legal [1] 53:20  
level [3] 37:22 43:11 46:4  
Lightfoot [3] 2:9 5:12  
7:7  
line [4] 9:7,8,9 54:10  
list [1] 37:1  
listed [1] 22:15  
literature [1] 27:4  
load [5] 18:22 31:19,22  
33:21 35:2  
Local [1] 14:2  
located [1] 28:14  
look [4] 17:2,4 21:4 52:2  
looked [1] 22:3  
looking [1] 43:15  
looks [1] 26:21  
lost [3] 34:19 35:19,20  
low [4] 36:5,7,8 37:11

---

managers [6] 11:16 27:12 28:10 29:22 34:12 37:18 marked [1] 17:3 market [23] 18:9,13 24:18 24:22 30:12 32:4,8,11,15 33:16 38:19,19,20 39:6,8 39:9,11,12,14,19,19 44:21 46:11 markets [7] 23:15,16 38:2,3,4,4,5 Marlboro [2] 44:9,11 Mart [1] 15:9 Marts [2] 15:13,14 mass [1] 24:15 match [7] 43:23 44:1,2,7 44:14 45:21 46:1 may [7] 2:7,18 3:4 28:11 50:6 51:17,18 mean [1] 12:2 13:11,14 18:15 21:17 22:10,10,12 22:21 23:1,21,22 24:14 25:21 26:19 30:20 31:23 35:5 40:20 43:11 45:3,18 49:8 51:21 53:12 means [2] 21:1 41:21 meet [1] 36:10 meeting [3] 29:10,12 41:21 memo [1] 41:13,16 memory [1] 33:19 mentioned [2] 29:20 49:11 merchandise [1] 36:9 merchants [1] 48:8 method [1] 37:3 METHVIN [1] 5:4 might [9] 12:13 23:8,12 23:13 25:4,16 35:2,3 45:4 MILES [1] 5:5 minute [1] 17:2 Mississippi [1] 9:10 misunderstanding [1] 45:4 mixed [1] 10:23 Montgomery [1] 5:8 month [1] 40:21 monthly [1] 54:14 most [1] 42:2 45:13	new [8] 10:14,17,22 11:4 11:4,6,8 19:14 Newport [4] 42:23 43:2 43:6,23 Newports [1] 45:5 nor [3] 3:11 56:16,17 north [6] 2:11 5:16,21 7:8 9:7 35:14 Notary [1] 2:8 nothing [2] 25:23 42:13 notice [2] 2:23 20:20 now [15] 9:5 27:11 28:18 30:7 34:19 35:20 38:1,6 38:18,18 39:12,22 40:15 49:5,22 number [5] 1:4 19:8 22:16 26:5 33:23	32:18 parameters [2] 28:22 44:18 Pardon [1] 16:20 part [7] 10:17 18:18 20:16 34:14,21 45:13 53:17 particular [7] 11:17 12:6 12:10 22:12 33:1 36:11 47:5 parties [3] 2:3,18 56:17 pass [3] 34:15 38:15 42:11 Pate-Daniels [1] 14:21 people [11] 10:13 12:23 19:18 29:14 30:15,16 32:22 34:23 37:16 38:8 38:16 per [1] 24:14 period [1] 11:18 person [2] 31:14,16 Petrey [11] 49:4,8,9,11 49:12 50:3,5,6,8,12,23 picked [1] 14:11 piece [1] 34:9 Piggly [4] 14:7,8,10,12 place [1] 48:22 plaintiff [3] 1:7 5:3 21:11 POGUE [1] 5:19 point [3] 5:21 26:12 51:5 PORTIS [1] 5:4 position [6] 8:9 11:12 34:1,2 49:4 53:22 possibly [2] 31:12 35:16 POTTHOFF [1] 6:5 prefer [4] 35:7 37:14 40:17 43:19 presence [1] 46:7 price [2] 32:2 52:4 primary [1] 12:12 printout [2] 20:9 43:7 privilege [1] 35:18 Procedure [2] 3:3 7:4 proceedings [1] 7:13 product [1] 37:5 products [2] 34:18 43:3 promote [2] 52:1 53:8 promoting [1] 25:19 promotion [2] 51:21 55:9 promotional [7] 35:5 51:6 52:6,7 54:4,17,18 promotions [6] 52:8,13 52:21 54:9,13,22 provide [2] 46:18 54:7 provided [2] 7:3 43:14 proximity [1] 18:1 Public [1] 2:8 pull [8] 22:21,22 24:1,5 24:12,15,21 25:13 pulled [1] 26:8	pulls [1] 24:4 purchase [1] 51:6 purchased [1] 50:22 purpose [2] 23:14 48:7 put [10] 24:2 28:21 40:3,6 42:16 45:7 51:18 52:22 53:4,10 putting [1] 54:17	respective [1] 2:4 respond [1] 48:19 responsibilities [3] 10:9 20:17 52:12 responsibility [5] 12:13 34:14,22 45:11 49:22 responsible [9] 12:16 12:18,19,20,23 13:1 32:23 51:8 54:16 RESULT [1] 56:18 retail [7] 8:16,17,21 18:5 47:3 55:4,4 retailer [11] 18:5 48:13 51:13,16,19 52:1,7,21,23 53:10 54:19 retailers [5] 12:17 13:3 14:14,15 55:8 retained [1] 3:10 Reynolds [8] 1:9 8:1 15:19 16:9,11 40:13 50:13 54:4 RICHARD [2] 1:6 5:20 right [21] 14:1 15:12,12 18:11 23:1 24:13 25:9 26:19 27:13 29:6 30:7,8 30:23 33:13 34:21 35:20 38:1 39:15 41:6 50:11 52:10 Rissler [7] 27:14,15,16 28:6 30:3,7 38:12 RJR [7] 16:2 26:16,21 27:22 33:17 42:2 43:3 ROU [2] 47:14,16 row [1] 42:16 Roy [4] 27:12,22 30:5 38:12 RPR [2] 1:18 6:12 Rule [2] 3:2 7:3 Rules [2] 3:3 7:4 run [2] 52:2 53:9
-Q-	-O-		-R-	-S-
quantities [1] 54:12 quarterly [2] 54:21 55:5 questions [5] 40:9 43:11 55:15,16 56:10 quick [1] 51:5	Objection [4] 31:11 35:10 42:5 53:19 objections [2] 2:16,18 obtained [1] 48:8 obviously [1] 53:21 offered [1] 2:20 office [2] 2:9 7:6 Ohio [1] 5:23 Oil [1] 15:11 old [1] 25:14 older [1] 25:14 29:3,4 30:16 32:5 one [2] 20:13 40:21 one [1] 11:6 11:9,10 12:4 12:14 13:14 17:9 18:12 21:8 29:22 34:1 35:8 49:19 51:12,12,22 52:3 53:9 17:54,9 ones [2] 11:8 38:13 opening [1] 19:15 opens [1] 19:7 operations [1] 47:18 oral [1] 3:7 7:12 Orange [1] 6:7 order [1] 15:2 ordering [2] 36:18,21 original [1] 3:6 own [1] 24:5 owned [1] 15:9 owner [4] 32:16,23 40:1 43:14 owns [2] 15:13 33:12	per [1] 24:14 period [1] 11:18 person [2] 31:14,16 Petrey [11] 49:4,8,9,11 49:12 50:3,5,6,8,12,23 picked [1] 14:11 piece [1] 34:9 Piggly [4] 14:7,8,10,12 place [1] 48:22 plaintiff [3] 1:7 5:3 21:11 POGUE [1] 5:19 point [3] 5:21 26:12 51:5 PORTIS [1] 5:4 position [6] 8:9 11:12 34:1,2 49:4 53:22 possibly [2] 31:12 35:16 POTTHOFF [1] 6:5 prefer [4] 35:7 37:14 40:17 43:19 presence [1] 46:7 price [2] 32:2 52:4 primary [1] 12:12 printout [2] 20:9 43:7 privilege [1] 35:18 Procedure [2] 3:3 7:4 proceedings [1] 7:13 product [1] 37:5 products [2] 34:18 43:3 promote [2] 52:1 53:8 promoting [1] 25:19 promotion [2] 51:21 55:9 promotional [7] 35:5 51:6 52:6,7 54:4,17,18 promotions [6] 52:8,13 52:21 54:9,13,22 provide [2] 46:18 54:7 provided [2] 7:3 43:14 proximity [1] 18:1 Public [1] 2:8 pull [8] 22:21,22 24:1,5 24:12,15,21 25:13 pulled [1] 26:8	R [5] 3:6 5:1,6 6:1 56:1 R-i-s-s-l-e-r [1] 27:19 R.J. [8] 1:9 8:1 15:18 16:9 16:11 40:13 50:13 54:4 R.P.R. [2] 2:8 56:6 Raceway [1] 13:10 Ray [4] 9:20 28:13 30:1,5 read [1] 18:12 reading [1] 18:10 real [2] 35:23 51:5 reason [2] 31:16,18 REAVIS [1] 5:19 receive [1] 38:9 received [2] 21:19 22:1 receiving [1] 52:9 refer [1] 15:13 referencing [1] 26:5 referring [2] 52:15,18 refers [1] 18:9 regarding [2] 16:11 42:11 region [2] 28:4 39:13 regional [10] 27:7,9,11 28:3,8 29:22 30:3,6 41:20 47:18 regularly [1] 29:20 reimburse [1] 52:3 rely [2] 33:10 41:2 remember [1] 30:8 rep [3] 15:18 16:6 40:8 repeat [3] 34:19,20 53:23 Reporter [2] 3:11 7:2 reports [1] 19:3 representatives [1] 44:13 REPRESENTS [1] 56:12 reps [10] 8:16,16 10:12 11:4 36:23 50:1 52:17,19 55:3,4 resided [1] 49:19 resources [1] 54:7	respective [1] 2:4 respond [1] 48:19 responsibilities [3] 10:9 20:17 52:12 responsibility [5] 12:13 34:14,22 45:11 49:22 responsible [9] 12:16 12:18,19,20,23 13:1 32:23 51:8 54:16 RESULT [1] 56:18 retail [7] 8:16,17,21 18:5 47:3 55:4,4 retailer [11] 18:5 48:13 51:13,16,19 52:1,7,21,23 53:10 54:19 retailers [5] 12:17 13:3 14:14,15 55:8 retained [1] 3:10 Reynolds [8] 1:9 8:1 15:19 16:9,11 40:13 50:13 54:4 RICHARD [2] 1:6 5:20 right [21] 14:1 15:12,12 18:11 23:1 24:13 25:9 26:19 27:13 29:6 30:7,8 30:23 33:13 34:21 35:20 38:1 39:15 41:6 50:11 52:10 Rissler [7] 27:14,15,16 28:6 30:3,7 38:12 RJR [7] 16:2 26:16,21 27:22 33:17 42:2 43:3 ROU [2] 47:14,16 row [1] 42:16 Roy [4] 27:12,22 30:5 38:12 RPR [2] 1:18 6:12 Rule [2] 3:2 7:3 Rules [2] 3:3 7:4 run [2] 52:2 53:9
-N-	-P-			
N [3] 4:1 5:1 6:1 name [2] 7:21 22:15 names [1] 13:4 necessary [1] 2:15 need [8] 22:16,18 23:2,8 36:22 37:6 43:12 50:5 needs [1] 45:12 NEITHER [1] 56:16 never [6] 16:17 21:16,17 22:19,19,20	P [4] 5:1,1 6:1,1 P.C [1] 5:5 p.m [2] 2:13 7:11 packs [2] 35:8 52:4 PAGE [1] 4:3 paper [1] 34:9 paperwork [2] 19:22			S [2] 5:1 6:1 SAITH [1] 55:17 Salem [2] 23:16 43:22 Salems [1] 42:16 sales [37] 8:11,15,16,18 8:19 10:12,12 11:4 15:18 16:6 18:16 19:3,6 23:11 23:12 27:3 29:10,12 32:22 33:5 34:23 37:16 39:20 40:8 42:11 44:13 45:16 46:4 48:6 49:23 52:11,11 52:14,16,17,19 55:3 salesman [5] 34:4 48:18 51:15,17,23 salesmen [5] 32:18 36:4 48:6 51:7 55:2 salesperson [4] 31:10 33:17 44:22 45:11 satisfy [1] 37:6 Savannah [2] 15:21 16:4 saw [1] 45:5

<p>says (4) 18:14 20:20 33:14 34:10 schools (1) 18:2 se (1) 24:14 SEABORN (1) 1:6 second (4) 32:5 34:1 51:3 51:20 see (5) 23:3 39:2 43:10 44:15 46:3 sell (1) 53:11 senator (1) 9:23 send (5) 10:19 19:10 32:19 47:11,13 serves (1) 33:19 service (1) 50:9 services (1) 50:6 set (4) 21:6,7,16 51:11 shall (1) 2:15 shipped (1) 54:14 Shop-A-Snak (6) 13:7 13:8,18,19,14:2,4 shoppers (1) 17:20 shot (1) 35:17 show (3) 47:1 51:19 55:10 side (2) 35:12,13 sign (4) 19:10,18 47:2 54:6 simple (1) 35:23 single page (1) 20:9 SIS (1) 18:9,13,15 19:7 19:13,20 29:4,10,12,15 22:3,13 24:18 46:9,19 48:3 sit (1) 12:14 41:23 size (1) 23:10 Skinner's (2) 13:12 14:20 smoker (1) 18:5 26:16 28:19 smokers (2) 25:2,7,7,10 25:15 26:22 28:23 35:7 37:14 46:3,16 42:4 smoking (1) 16:12 sold (2) 23:16,17 someone (4) 22:11,11 31:13 41:2 somewhere (1) 28:5 south (1) 6:7 21:7 35:14 speaking (2) 11:18 47:1 special (1) 52:3 speculation (1) 31:12 spell (2) 8:23 27:17 spelled (1) 9:2 spelling (1) 9:2 square (1) 23:10 stand (1) 47:17 standpoint (2) 21:5 46:7 started (3) 16:6 30:4 35:12 State (2) 7:21 56:2</p>	<p>stay (1) 11:10 STENOTYPE (1) 56:9 still (7) 27:22 28:16 39:22 40:15,23 42:1 45:7 STIPULATED (3) 2:2 2:14,22 stipulations (2) 2:1 7:5 stock (5) 36:7,8,13 37:11 37:11 stocks (2) 36:5,6 Stop (1) 13:14 store (17) 19:6,14 20:1 32:2,8 33:2,12 36:11 39:23 43:9,10,15 45:1,5,6 47:5,8 stores (27) 12:21 15:8 17:13,23 19:16 21:21 22:14,17,18,22 24:1,2,15 25:16 45:12,16 46:10,14 47:3 49:15,18,22 50:6 50:9,22 51:10 Street (4) 2:11 5:7,16 7:8 strongly (1) 44:23 structure (1) 12:5 stuff (1) 53:12 STUHAN (6) 5:20 31:11 35:10 42:3 53:19 55:14 subject (1) 18:8 such (2) 12:21 19:6 sufficient (1) 36:9 Sunny (1) 14:5 Supermarket (1) 14:6 supplied (1) 19:6 supply (1) 36:18,21,23 supposed (1) 53:3 sworn (1) 7:17 system (1) 18:16,19,21 19:12,19,20,1 22:14 24:11 25:22,23 41:14 47:21</p> <p style="text-align: center;">-T-</p> <p>T (2) 56:1,1 T-shirts (1) 35:8 taking (1) 5:6 48:22 taught (1) 34:8 teach (3) 34:23 36:4,15 teaches (1) 37:16 teaching (2) 37:10 38:8 telling (1) 40:1 tells (4) 33:6 34:10 37:13 54:22 ten (2) 8:15,16 tendency (1) 45:16 Tennessee (1) 9:8 term (6) 18:4 20:21,23 21:1 24:7,17 terms (1) 26:8 territory (1) 15:20 Terry (7) 1:18 2:7 3:4 6:12 7:1 56:6,21 testified (1) 7:18</p>	<p>testimony (2) 1:13 3:7 Texas (1) 28:5 Therefore (1) 22:19 thereto (2) 2:21 56:10 they've (1) 21:20 thinking (1) 31:13 thirty (3) 29:3,4 30:16 thought (1) 15:4 three (3) 15:23 27:11 29:22 through (9) 2:3 15:6 18:22 19:3 26:22 39:23 41:12 42:3 49:23 throughout (1) 40:11 tied (1) 20:15 times (1) 51:17 Tobacco (3) 1:9 8:2 14:21 today (2) 12:11 41:23 together (1) 54:17 Tom (1) 13:6 too (2) 20:21 27:18 top (1) 42:16 train (1) 10:11 trained (1) 38:16 training (17) 10:4,9 11:2 11:6,11,15,22 12:8 15:16 30:2 33:10,11 34:8,15,22 36:3 38:7 TRANSCRIBED (1) 56:11 transcript (2) 3:7 56:13 travel (1) 11:2 trial (1) 2:19 trials (1) 48:22 tried (2) 24:21 25:13 true (2) 50:3 56:12 try (7) 43:23 44:1,2,7 51:13,16 52:21 trying (6) 13:17 24:6 26:7 38:11 46:4,6 turn (1) 55:7 twenty-five (5) 26:23 29:2,5 33:23 40:19 twenty-five-year-old (9) 30:12,15 32:3,11,15 33:16 35:6 40:2 42:3 twenty-one (17) 25:8,11 25:14 26:22 29:2,4 30:11 30:14 32:3,11,15 33:15 33:22 35:6 40:2,18 42:3 two (12) 21:9 27:21,21 29:21 32:1,2 35:8 51:22 52:2 53:9,11 54:9 type (3) 41:4 43:18 48:13 types (6) 19:21 37:8,13 38:2 41:9,10</p> <p style="text-align: center;">-U-</p> <p>Ulmer (1) 14:21 ultimately (1) 13:1</p>	<p>under (2) 18:8 51:7 underneath (1) 8:12 understand (3) 23:5,6 51:9 unit (1) 47:18 unless (1) 31:15 up (33) 14:11 20:12,13,14 21:10,16 22:5,21,23 24:1 24:4,15 25:13 26:8 28:21 29:10,20 35:13 40:3 43:23 44:1,2,8,14 45:7,10,21 46:1 47:22 51:11,19 52:22 53:10 used (5) 22:20,20 24:18 46:18 48:3 uses (1) 26:16 using (1) 34:16 utilize (1) 22:12</p> <p style="text-align: center;">-V-</p> <p>Vantage (1) 53:10 varied (1) 10:16 vary (1) 10:15 versa (1) 32:6 vice (1) 32:5 voice (1) 41:18 volume (4) 19:17,17 23:9 24:1 volumes (2) 24:8,9 vs (1) 1:8</p> <p style="text-align: center;">-W-</p> <p>waived (1) 3:1 Wal-Mart (2) 13:19,23 Wal-Marts (1) 12:22 walk (2) 43:9 55:10 wants (1) 35:17 ways (1) 22:21 week (2) 24:3,4 west (2) 9:8 35:13 Western (1) 14:6 White (3) 2:10 5:12 7:7 Wholesale (1) 49:4 wholesaler (1) 15:2 wholesalers (3) 12:20 14:14,16 Wiggly (3) 14:7,8,10 Wigglys (1) 14:12 WILLIAM (1) 5:14 WILLIAMS (4) 6:5,5,6 55:16 Williamson (6) 14:22 15:1,3,10,11,12 Winston (14) 29:3 38:3 38:3,19 39:5,11,12,13,14 39:19 44:10,21 45:7 47:22 Winston-Salem (7) 18:23 19:1 21:20 39:7 46:19 47:12 54:16 Winstons (5) 30:15 32:4</p>	<p>34:1 40:3 44:22 wish (2) 45:18,19 within (1) 47:4 without (1) 24:9 witness (5) 7:11 17:8 35:16 53:21 56:14 words (13) 10:21 21:11 21:13 23:12 25:17 28:20 29:7,9 31:6 38:10 45:3 48:10 53:9 worked (1) 30:1 workers (2) 8:18,19 works (1) 12:15</p> <p style="text-align: center;">-X-</p> <p>X (1) 4:1</p> <p style="text-align: center;">-Y-</p> <p>y'all (14) 19:13 23:8,13 30:21 32:17 33:5 36:15 40:15 42:15 45:17 47:11 53:9 55:5,7 year (1) 25:14 years (2) 15:23 25:8 young (16) 17:14,20 18:5 18:9,12 24:18,21,22 25:7 25:10 26:15,22 28:19,22 35:7 37:14 younger (1) 25:1</p>
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